

REMARKS/ARGUMENTS

Claims 1-6, 14-16 are withdrawn.

Claims 7-13 are pending.

In the Office Communication mailed on July 9, 2008, the Examiner states that the reply filed on May 16, 2008 is considered non-compliant because the reply failed to meet the requirements of 37 CFR 1.121 or 1.4 in that the listing of claims was not properly identified with the correct status identifier. More specifically, with respect to claim 7, there was missing verbiage compared to claim 7 as originally filed.

Applicant and the undersigned attorney herewith submit a complete listing of the claims with the correct status identifiers noted for each claim. Further, the missing verbiage in claim 7 has been re-entered into the claim. This error to claim 7 was a simple typographical error and no new matter has been added to this claim.

With respect to the restriction requirement and Applicant's election filed on May 16, 2008, the Examiner has stated that the election is not fully compliant in that the further election to the species was not properly identified.

In response to the requirement for an election of species dated April 28, 2008, the Applicant hereby elects, without transverse, the species identified as Species B (Figure 4), to claims 1-13. Figure 4 is a top view of a vertebrae having a bone tamp of the

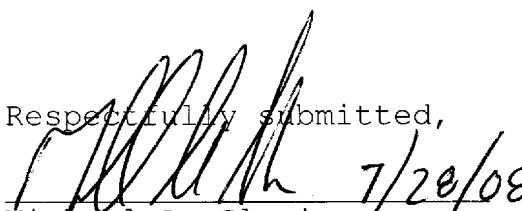
invention claimed. Species B based upon Figure 4 illustrates the cannual (21) induced transducer with EPA (23), shown in the enlarged view of Figure 3. Claims 7-11 are directed to the use of the device in an orthopedic system wherein the electroactive polymer has malleable properties including changes of size and shape. Claims 12 & 13 is directed to the device wherein the electroactive polymer has malleable properties changing in response to electrical stimulation.

It is respectfully submitted that Species B is directed to Claims 7-13.

SUMMARY

Now that the Applicant has fully complied with the requirements of 37 CFR 1.121 or 1.4, entry and consideration of the amendment filed on May 16, 2008 is respectfully requested.

The Commissioner for Patents is hereby authorized to charge any deficiency in any fees due with the filing of this paper or credit any overpayments in any fees paid on the filing to Deposit Account No. 13-0439.

Respectfully submitted,

Michael A. Slavin 7/28/08
Registration No. 34,016

McHale & Slavin, P.A.
2855 PGA Boulevard
Palm Beach Gardens, FL 33410
(561) 625-6575 (Voice)
(561) 625-6572 (Fax)